

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

C.A. No.19-742-LPS

JURY TRIAL DEMANDED

[VMWARE’S PROPOSED] VERDICT FORM

INFRINGEMENT

Infringement of U.S. Patent No. 8,209,687

Question No. 1:

Have Plaintiffs proven by a preponderance of the evidence that the following VMware products have literally infringed the following claims of the ’687 patent?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

VMware Product	Claim	Answer
DRS	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____

VMware Product	Claim	Answer
vROps	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____
VMware Cloud on AWS	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____

Proceed to the next page.

Question No. 2:

Have Plaintiffs proven by a preponderance of the evidence that VMware has actively induced third parties to literally infringe the following claims of the '687 patent for the following products?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

VMware Product	Claim	Answer
DRS	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____
vROps	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____
VMware Cloud on AWS	Claim 3	Yes _____ No _____
	Claim 7	Yes _____ No _____

If you answered “NO” to the preceding Question for all VMware Products and all claims, skip to Question No. 4.

Proceed to the next page.

Question No. 3:

Answer this question only if you answered “YES” to the preceding Question for a VMware Product and either claim for that specific product.

If you answered “Yes” to Question No. 2 for a specific VMware Product, what is the date (month and year) on which VMware first actively induced third parties to literally infringe the '687 patent for that product?

DRS	Date (month / year) _____
vROps	Date (month / year) _____
VMware Cloud on AWS	Date (month / year) _____

Proceed to the next page.

Infringement of U.S. Patent No. 9,654,367**Question No. 4:**

Do you find that the Plaintiffs have proven by a preponderance of the evidence that VMware's vROps product has literally infringed the following claims of the '367 patent?

"Yes" is a finding for Plaintiffs. "No" is a finding for VMware.

Claim 1	Yes _____	No _____
Claim 9	Yes _____	No _____
Claim 13	Yes _____	No _____
Claim 17	Yes _____	No _____

Question No. 5:

Do you find that the Plaintiffs have proven by a preponderance of the evidence that VMware has actively induced third parties to literally infringe the following claims of the '367 patent for VMware's vROps product?

"Yes" is a finding for Plaintiffs. "No" is a finding for VMware.

Claim 1	Yes _____	No _____
Claim 9	Yes _____	No _____
Claim 13	Yes _____	No _____
Claim 17	Yes _____	No _____

If you answered "NO" to the preceding Question for all claims, skip to Question No. 7.

Proceed to the next page.

Question No. 6:

Answer this question only if you answered “YES” to the preceding Question for any claim.

If you answered “Yes” to Question No. 5 for any claim, what is the date on which VMware first actively induced third parties to literally infringe the ’367 patent?

Date (month/year): _____

INVALIDITY**Invalidity of U.S. Patent No. 8,209,687****Question No. 7:**

Has VMware proven by clear and convincing evidence that the following claims of the ’687 patent are invalid as anticipated by prior art?

“Yes” is a finding for VMware. “No” is a finding for Plaintiffs.

Claim 3	Yes _____ No _____
Claim 7	Yes _____ No _____

Question No. 8:

Has VMware proven by clear and convincing evidence that the following claims of the ’687 patent are invalid because the claimed subject matter would have been obvious to a person of ordinary skill in the art at the time of the claimed invention?

“Yes” is a finding for VMware. “No” is a finding for Plaintiffs.

Claim 3	Yes _____ No _____
Claim 7	Yes _____ No _____

Invalidity of U.S. Patent No. 9,654,367**Question No. 9:**

Has VMware proven by clear and convincing evidence that the following claims of the '367 patent are invalid as anticipated by prior art?

“Yes” is a finding for VMware. “No” is a finding for Plaintiffs.

Claim 1	Yes _____	No _____
Claim 9	Yes _____	No _____
Claim 13	Yes _____	No _____
Claim 17	Yes _____	No _____

Question No. 10:

Has VMware proven by clear and convincing evidence that the following claims of the '367 patent are invalid because the claimed subject matter would have been obvious to a person of ordinary skill in the art at the time of the claimed invention?

“Yes” is a finding for VMware. “No” is a finding for Plaintiffs.

Claim 1	Yes _____	No _____
Claim 9	Yes _____	No _____
Claim 13	Yes _____	No _____
Claim 17	Yes _____	No _____

Proceed to the next page.

PROTECTABILITY OF ASSERTED MARKS

Question No. 11:

Have Plaintiffs proven by a preponderance of the evidence that each of the following words is inherently distinctive?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

Densify	Yes _____ No _____
Densifying	Yes _____ No _____
Densification	Yes _____ No _____

If you answered “NO” to the Question above for any of the words, proceed to the next Question as it relates to that word(s) only. If you answered “YES” for all of the words, skip to Question No. 13.

Proceed to the next page.

Question No. 12:

Have Plaintiffs proven by a preponderance of the evidence that each of the following words is at least descriptive and achieved secondary meaning in the marketplace as an indication of source for Plaintiffs prior to the earliest date that VMware publicly used that word?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

Densify	Yes _____ No _____
Densifying	Yes _____ No _____
Densification	Yes _____ No _____

If you answered “YES” to the Question above for any of the words, proceed to the next Question as it relates to that word(s) only. If you answered “NO” for any of the words in response to Question No. 11 AND this Question, you need not address any more Questions pertaining to that word(s). If you answered “NO” for all of the words in response to Question No. 11 AND this Question, skip to Question No. 18.

Proceed to the next page.

Question No. 13:

Have Plaintiffs proven by a preponderance of the evidence that Plaintiffs use each of the following words to indicate the source of their goods, placing the words on their products or on their labels or containers, or if that is not practical, on documents associated with the goods or their sale?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

Densify	Yes _____ No _____
Densifying	Yes _____ No _____
Densification	Yes _____ No _____

If you answered “YES” to the Question above for any of these word(s), proceed to the next Question as it relates to that word(s) only. If you answered “NO” for any of these word(s), you need not address any more Questions pertaining to that word(s). If you answered “NO” for all of the words in response to this Question, skip to Question No. 18.

Proceed to the next page.

TRADEMARK INFRINGEMENT (IF APPLICABLE)

Answer these questions only for any claimed marks that you found are protectable (by a “YES” answer to Question No. 13 and either Question No. 11 OR 12). If you have not found that any asserted mark is protectable, skip to Question No. 18.

False Designation of Origin

Question No. 14:

Have Plaintiffs proven by a preponderance of the evidence that VMware committed false designation of origin through its use of the following words?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

“densify”	Yes _____ No _____
“densifying”	Yes _____ No _____
“densification”	Yes _____ No _____

Proceed to the next page.

Delaware Deceptive Trade Practices Act

Question No. 15:

Have Plaintiffs proven by a preponderance of the evidence that VMware engaged in a deceptive trade practice through its use of the following words?

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

“densify”	Yes _____ No _____
“densifying”	Yes _____ No _____
“densification”	Yes _____ No _____

If you answered “YES” for any of the words in this Question, proceed to Question No. 16. If you answered “NO” for all of the words in response to Question No. 14 AND this Question, skip to Question No. 18.

Proceed to the next page.

Intentional Infringement

Question No. 16:

Answer this question only if you answered “YES” to Question No. 14.

If you have found that VMware committed false designation of origin, have Plaintiffs proven by a preponderance of the evidence that VMware acted intentionally, knowing it was an act of false designation of origin?

Check one:

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

“Yes” is a finding for Plaintiffs. “No” is a finding for VMware.

Fair Use of Trademarks

Question No. 17:

Answer this question only for any asserted mark for which you have answered “YES” to Question No. 14 OR 15.

Has VMware proven by a preponderance of the evidence that its use of the following words is a fair use?

“densify”	Yes _____ No _____
“densifying”	Yes _____ No _____
“densification”	Yes _____ No _____

“Yes” is a finding for VMware. “No” is a finding for Plaintiffs.

If you answered “YES” for all of the words in response to this Question, you need not address any more questions pertaining to Plaintiffs’ trademark claims.

Proceed to the next page.

DAMAGES (IF APPLICABLE)

The '687 Patent

Answer these Questions only if you have found that at least one claim of the '687 patent is infringed (by a "YES" answer to either Question Nos. 1 OR 2) and that the same claim is not invalid (that is, you gave a "NO" answer to all of Question Nos. 7, 8 AND 9). If you have not found that any '687 patent claim is both infringed and not invalid, skip to Question No. 24.

Question No. 18:

If you have found that VMware infringed at least one valid claim of the '687 patent, what is the dollar amount Plaintiffs have proven by a preponderance of evidence that they are entitled to as a reasonable royalty regarding Distributed Resource Scheduler (DRS) or products that interoperate with DRS?

Answer in dollars.

Answer: _____

Question No. 19:

If you have found that VMware infringed at least one valid claim of the '687 patent, what is the dollar amount Plaintiffs have proven by a preponderance of evidence that they are entitled to as a reasonable royalty regarding vRealize Operations Manager (vROps), version 7.0 and greater or products that interoperate with vROps version 7.0 and greater?

Answer in dollars.

Answer: _____

Proceed to the next page.

The '367 Patent

Answer these Questions only if you have found that at least one claim of the '367 patent is infringed (by a "YES" answer to either Question Nos. 4 OR 5) and that the same claim is not invalid (that is, you gave a "NO" answer to all of Question Nos. 10, 11, 12 AND 13). If you have not found that any claim is both infringed and not invalid, skip to Question No. 25.

Question No. 20:

If you have found that VMware infringed at least one valid claim of the '367 patent, what is the dollar amount Plaintiffs have proven by a preponderance of the evidence that they are entitled to as a reasonable royalty regarding vRealize Operations Manager (vROps), version 6.2 and greater, or products that interoperate with vROps version 6.2 and greater?

Answer in dollars.

Answer: _____

Proceed to the next page.

Trademark Claims

Answer these questions only for any asserted mark that you have found that is protectable (by a “YES” answer to Question No. 13 and either Question No. 11 OR 12), infringed (by a “YES” answer to either Question No. 14 OR 15) and not a fair use (that is, you gave a “NO” answer to Question No. 17). If you have not found that any asserted marks is both protectable, infringed, and not a fair use, skip to Question No. 23.

Question No. 21:

If you have found that VMware committed false designation of origin, what is the dollar amount of damages in the United States the Plaintiffs have proven by a preponderance of evidence?

Answer in dollars.

Answer: _____

Question No. 22:

If you have found that VMware committed a deceptive trade practice, what is the dollar amount of damages in the state of Delaware the Plaintiffs have proven by a preponderance of evidence?

Answer in dollars.

Answer: _____

Proceed to the next page.

WILLFULNESS (IF APPLICABLE)**Question No. 23:**

Answer this question only if you have found that (a) at least one claim of the '687 patent is infringed (by a "YES" answer to either Question No. 1 OR 2 for any VMware product) and (b) the same claim is not invalid (that is, you gave a "NO" answer to all of Question Nos. 7 and 8 for that claim). If you have not found that any claim of '687 patent is both infringed and not invalid, skip to Question No. 24.

If you have found that VMware infringed at least one claim of the '687 patent, have Plaintiffs proven by a preponderance of the evidence that VMware's infringement of the '687 patent was willful for the following VMware product?

"Yes" is a finding for Plaintiffs. "No" is a finding for VMware.

Check one:

VMware Product	Answer
DRS	Yes _____ (Willful) No _____ (Not Willful)
vROps	Yes _____ (Willful) No _____ (Not Willful)
VMware Cloud on AWS	Yes _____ (Willful) No _____ (Not Willful)

Proceed to the next page.

Question No. 24:

Answer this question only if you have found that (a) at least one claim of the '367 patent is infringed (by a "YES" answer to either Question No. 4 OR 5) and that the same claim is not invalid (that is, you gave a "NO" answer to all of Question Nos. 10, 11, 12 AND 13). If you have not found that any claim of the '367 patent is both infringed and not invalid, skip this question.

If you have found that VMware infringed at least one claim of the '367 patent, have Plaintiffs proven by a preponderance of the evidence that VMware's infringement of the '367 patent was willful?

"Yes" is a finding for Plaintiffs. "No" is a finding for VMware.

Check one:

<input type="checkbox"/>	Yes (Willful)
<input type="checkbox"/>	No (Not Willful)

ANSWER NO FURTHER QUESTIONS.